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IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

MID-AMERICA REGIONAL BARGAINING ASSOCIATION, CONTRACTORS ASSOCIATION OF WILL AND GRUNDY COUNTIES, RESIDENTIAL CONSTRUCTION EMPLOYERS COUNCIL, JOLIET CONSTRUCTION CO. and U.S. HOME CORPORATION,

Petitioners,

vs.

WILL COUNTY CARPENTERS DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA (AFL-CIO), COMMONWEALTH EDISON COMPANY and GUST K. NEWBERG CONSTRUCTION CO.,

Respondents.

PETITIONERS' REPLY BRIEF TO RESPONDENTS' BRIEFS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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REPLY[1]

The Seventh Circuit's decision to affirm the dismissal of Petitioners' Complaint has denied Petitioners their right to prove the allegations of their Complaint where Petitioners

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[1] References made herein to the briefs filed by Respondents in opposition to Petitioners' petition for a writ of certiorari are as follows: Commonwealth Edison's Brief ("Commonwealth's Br. ____"); Will County Carpenters District Council's Brief ("District Council's Br. ____").

clearly have demonstrated that neither the statutory nor the non-statutory labor exemption applies to immunize Respondents' conspiracy from the antitrust laws. The Seventh Circuit's decision contravenes the liberal notice pleading requirements established in *Conley* v. *Gibson*, 355 U. S. 41 (1957), to test the sufficiency of a complaint and the strong judicial policy against granting of motions to dismiss in the antitrust area. *Austin* v. *House of Vision, Inc.*, 385 F. 2d 171 (1967), *aff'd on later appeal*, 404 F. 2d 401 (7th Cir. 1968).

The Seventh Circuit erroneously characterized the Complaint to allege nothing more than a conspiracy based upon the Escrow Agreement which, according to the Seventh Circuit, is immune from antitrust challenge because it is "similar to a traditional collective bargaining agreement" (App. A, p. 11a, n.14). Neither the Seventh Circuit nor any of the Respondents in their briefs to this Court are able to explain how the Escrow Agreement can be considered a collective bargaining agreement entitled to the protection of the labor exemption from the antitrust laws. Commonwealth, a non-labor, non-employer entity, instigated and negotiated the Escrow Agreement and employed it to circumvent and render meaningless the collective bargaining process in Will County. Petitioners allege in ample detail the facts constituting Respondents' conspiracy by pleading that Respondents acted in concert with the knowledge and intent that the effects of their unlawful arrangements would be to impose artificially high wages on all employers of Union carpenters in Will County, to damage the Associations and Contractors in their respective businesses and to unlawfully favor Newberg over other employers in Will County (App. C, p. 43a). This Court is free to examine Petitioners' Complaint and determine whether a conspiracy in violation of the antitrust laws has been properly pleaded. *Poller* v. *Columbia Broadcasting System*, 368 U. S. 464 (1962).

This Court has recognized the obvious: that stable labor relations can be established and preserved only within the confines of a *bona fide* collective bargaining relationship between union and employer. Consequently, this Court has consistently refused to permit strangers who interfere in that relationship to claim the labor exemption from the antitrust laws. *Connell Construction Co.* v. *Plumbers and Steamfitters Local 100*, 421 U. S. 616, *reh. denied*, 423 U. S. 884 (1975). Here, Commonwealth, a total stranger to the collective bargaining process, intervened in the collective bargaining negotiations between the Associations and the Union and, pursuant to its conspiracy with the other Respondents, used its prodigious economic resources to impose a wage agreement upon all employers of Union carpenters in Will County in order to buy labor peace and aid a favored contractor. The resulting emasculation of the collective bargaining process in Will County and the dire economic injury suffered by Newberg's competitors who were not beneficiaries of Commonwealth's subsidies illustrate the disastrous effects of Respondents' conspiracy. Without a credible threat of antitrust liability, any financially powerful entity will feel free to intervene in the collective bargaining process to advance interests which are unrelated to legitimate labor concerns[2] at the expense of the collective bargaining process and competitive conditions in the affected industry.

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[2] An entity like Commonwealth which merely has an economic interest in the resolution of a labor dispute rather than an interest in furthering legitimate labor objectives is not a "person participating or interested in a labor dispute" and cannot fall within the ambit of the Norris-LaGuardia or Clayton Acts. Commonwealth's interest "to avoid expensive work stoppages on its construction projects" (Commonwealth's Br., p. 7), is totally removed from the labor issues affecting the employment relationship between the Union and the employers of its members. *See, Columbia River Packers Ass'n* v. *Hinton*, 315 U. S. 143 (1942); *Erie R. Co.* v. *Local 1286, International Longshoremen's Ass'n, et al.*, 117 F. Supp. 157 (W. D. N. Y. 1957); *Brotherhood of R. Trainmen* v. *Atlantic Coast Line R. Co.*, 362 F. 2d 649 (5th Cir.), *aff'd*, 385 U. S. 20 (1966).

Respondents are simply unable to cite any credible authority to support their proposition that a stranger to the union-employer relationship has unlimited license to interfere in the collective bargaining process. As a consequence, Respondents characterize the Escrow Agreement in various manners. Commonwealth innocently asserts that it meekly "acquiesce[d]" to the Union's demands (Commonwealth's Br., p. 14), totally ignoring the plain allegations of Petitioners' Complaint, which must be taken as true for purposes of deciding a motion to dismiss, that Commonwealth was the instrumental party in instigating and negotiating the Escrow Agreement. The Union more candidly admits that "both Newberg and Edison were valuable pawns" (District Carpenters' Br., p. 11), with which it could conspire to circumvent the collective bargaining process and impose the terms of the Escrow Agreement upon all employers of Union carpenters in Will County and to destroy the ability of the Associations to engage in effective collective bargaining. *UMW* v. *Pennington*, 581 U. S. 657 (1965), and *Connell, supra,* read together clearly dictate that Respondents' conspiracy be found unlawful since it was reached outside of

the collective bargaining process with the intent and effect of imposing an artificially high wage scale on all employers of Union carpenters in Will County to the distinct and intended advantage of Newberg.[3]

[3] Respondent Commonwealth suggests that Petitioners' Complaint fails to state a cause of action because Newberg was "pressure[d]" to join Respondents' conspiracy (Commonwealth's Br., p. 11). The degree of enthusiasm with which each of the Respondents joined and participated in the conspiracy is irrelevant as a matter of law where all of the Respondents knew and intended that their conspiracy would drive certain of Newberg's competitors out of business by imposing artificially high wages on them and would destroy the ability of the Associations to engage in their business of representing employers in collective bargaining negotiations. In *California State Council of Carpenters* v. *Associated General Contractors of California, Inc.*, 648 F. 2d 527, 531 (9th Cir. 1980), *cert. granted* ____ U. S. ____, 102 S. Ct. 998 (1982), the court held that the labor exemption was forfeited where two unions charged, *inter alia*, that the individual members of an association of general contractors "coerced and aided each other" to pursue a course of conduct designed to injure the plaintiff unions in their business as unions. The court attached no significance to the fact that some of the conspirators had been coerced participants in the conspiracy. Further, the majority of the Ninth Circuit rejected the dissenter's argument—an argument much like that advanced by the Respondents and the courts below—that an insufficient effect on a business market had been charged, finding that the plaintiff unions had been injured in their business of organizing and representing employees and negotiating collective bargaining agreements. The Associations have been injured in a similar manner, while the competitive injury to the Contractors of having to compete against Newberg without the benefit of Commonwealth's subsidies is obvious.

CONCLUSION

The Seventh Circuit's decision is an open invitation to strangers to the union-employer relationship to interfere in that relationship and at the same time claim the protection of the labor exemption from the antitrust laws that the proper parties to collective bargaining enjoy. The Seventh Circuit's decision in effect encourages unions and employers to abandon good faith negotiations and seek, as in the instant case, non-labor, non-employer allies with which they can conspire to achieve their objectives outside of the collective bargaining process. It is not hyperbole to state that the very stability and integrity of the collective bargaining process is at stake in the outcome of this case. This Court should reverse the Seventh Circuit's decision and afford Petitioners the opportunity of proving that Respondents' conduct violated the antitrust laws.

For all of the above reasons, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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